

The House Committee on Children and Youth offers the following substitute to HB 70:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1A of Title 20 of the Official Code of Georgia Annotated, relating to early
2 care and learning, so as to require certain employees to have state and national fingerprint
3 records checks prior to employment; to revise certain definitions; to change certain
4 provisions relating to records check requirements for applicants and notification to such
5 applicants; to change certain provisions relating to requirements of individuals residing in
6 family day-care homes; to remove preliminary records checks of employees and require state
7 and national fingerprint determinations, except in limited circumstances; to provide that
8 directors convicted of certain criminal acts lose the ability to serve as directors; to provide
9 for criminal background checks for current directors, employees, and certain other persons;
10 to provide for related matters; to provide for an effective date and applicability; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 1A of Title 20 of the Official Code of Georgia Annotated, relating to early care and
15 learning, is amended by revising Article 2, relating to background checks, as follows:

16 "ARTICLE 2

17 20-1A-30.

18 As used in this article, the term:

19 (1) 'Center' means a day-care center, group day-care home, family day-care home, or
20 child care learning center which is required to be licensed or registered under Article 1
21 of this chapter.

22 (2) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of
23 whether an appeal of the conviction has been sought.

(3) 'Crime' means:

(A) Any ~~any~~ felony;

(B) A ~~a~~ violation of Code Section 16-5-23, relating to simple battery, when the victim is a minor;

(C) A ~~a~~ violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor;

(D) A ~~a~~ violation of Chapter 6 of Title 16, relating to sexual offenses;

(E) A ~~a~~ violation of Code Section 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph; or

(F) Any ~~any~~ other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

(4) 'Criminal record' means:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(5) 'Director' means the ~~chief administrative or executive officer of~~ on-site manager of a facility who is responsible for hiring employees.

(6) 'Emergency temporary employee' means an employee other than a director whose duties involve personal contact between that person and any child being cared for at the facility and who is hired on an expedited basis to avoid noncompliance with staffing standards for centers required by law, rule, or regulation.

(7) 'Employee' means any person, other than a director, employed by a center to perform at any of the center's facilities any duties which involve personal contact between that person and any child being cared for at the facility and also includes any adult person

61 who resides at the facility or who, with or without compensation, performs duties for the
62 center which involve personal contact between that person and any child being cared for
63 by the center.

64 (8) 'Employment history' means a record of where a person has worked for the past ten
65 years.

66 (9) 'Facility' means a center's real property at which children are received for care.

67 ~~(10) 'Fingerprint records check determination' means a satisfactory or unsatisfactory~~
68 ~~determination by the department based upon a records check comparison of GCIC~~
69 ~~information with fingerprints and other information in a records check application.~~

70 (10) 'Fingerprint' means an inked fingerprint card or an electronic image of a person's
71 fingerprint.

72 (11) 'GCIC' means the Georgia Crime Information Center established under Article 2 of
73 Chapter 3 of Title 35.

74 (12) 'GCIC information' means criminal history record information, as defined in Code
75 Section 35-3-30, from GCIC.

76 (13) 'License' means the document issued by the department to authorize the center to
77 which it is issued to operate a facility.

78 (14) 'National fingerprint records check determination' means a ~~satisfactory or~~
79 ~~unsatisfactory~~ determination by the department in accordance with applicable ~~law~~ laws
80 based upon a report from the Federal Bureau of Investigation after a search of bureau
81 records and fingerprints.

82 ~~(15) 'Preliminary records check application' means an application for a preliminary~~
83 ~~records check determination on forms provided by the department.~~

84 (15) 'NCIC' means the National Crime Information Center.

85 (16) 'NCIC information' means criminal history record information, as defined in Code
86 Section 35-3-30, from the Federal Bureau of Investigation.

87 (17) ~~'Preliminary records check determination' means a satisfactory or unsatisfactory~~
88 ~~determination by the department based only upon a comparison of GCIC information~~
89 ~~with other than fingerprint information regarding the person upon whom the records~~
90 ~~check is being performed.~~

91 ~~(17)~~(18) 'Records check application' means two sets of classifiable fingerprints, a records
92 search fee to be established by the board by rule and regulation, payable in such form as
93 the department may direct to cover the cost of a state fingerprint records check
94 determination and national fingerprint records check determination under this article, and
95 an affidavit by the applicant disclosing the nature and date of any arrest, charge, or
96 conviction of such applicant for the violation of any law, except for motor vehicle

parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

~~(18)~~(19) 'Satisfactory determination' means a written determination that a person for whom a records check was performed was found to have no criminal record.

~~(19)~~(20) 'State fingerprint records check determination' means a ~~satisfactory or unsatisfactory~~ determination by the department in accordance with applicable ~~law~~ laws based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

~~(20)~~(21) 'Unsatisfactory determination' means a written determination that a person for whom a records check was performed has a criminal record.

20-1A-31.

(a) Each center shall be required to obtain a separate license for each facility and shall have a separate director for each facility.

(b) An applicant for a new license shall apply for a separate license for each new facility in this state owned or operated by that applicant and shall have a separate director for each such facility.

20-1A-32.

Accompanying any application for a new license for a facility, the applicant shall furnish to the department a records check application for the director and ~~a satisfactory preliminary records check~~ for each employee of such facility. In lieu of such records check applications, the applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months, the director or any employee received a satisfactory state fingerprint records check determination and national fingerprint records check ~~determinations and each employee received a satisfactory preliminary records check~~ determination, or that any employee other than the director whose ~~preliminary~~ records check application revealed a criminal record of any kind has either subsequently received a satisfactory state fingerprint records check determination and national fingerprint records check ~~determinations~~ determination or has had the unsatisfactory determination reversed in accordance with Code Section 20-1A-43. The department may either perform ~~preliminary records~~ criminal background checks under agreement with GCIC or contract with GCIC and appropriate law enforcement agencies which have access to NCIC information and GCIC information to have those agencies perform for the department a ~~preliminary records~~ criminal background check for each ~~preliminary records check application~~ director, employee, or adult living in a family day-care center submitted ~~thereto~~

by the department. Either the department or the appropriate law enforcement agencies may charge reasonable fees for performing ~~preliminary records~~ criminal background checks.

20-1A-33.

After being furnished the required records check application under Code Section 20-1A-32, the department shall notify ~~in writing~~ the license applicant in writing as to each person for whom ~~an~~ a records check application was received regarding whether the department's determination as to that person's state fingerprint records check determination was satisfactory or unsatisfactory. If the ~~preliminary records check determination was satisfactory as to each employee of an applicant's facility and the~~ state fingerprint records check determination was satisfactory as to the director and each employee, that applicant may be issued a license for that facility if ~~the~~ such applicant otherwise qualifies for a license under Article 1 of this chapter. If the state ~~or~~ fingerprint records check determination and national fingerprint records check determination was unsatisfactory as to the director of an applicant's facility, ~~the~~ that applicant shall designate another director for that facility after receiving notification of ~~the~~ such unsatisfactory determination and proceed under Code Section 20-1A-32 and this Code section to obtain a state fingerprint records check determination and national fingerprint records ~~checks~~ check determination for that newly designated director. If the ~~preliminary records check state fingerprint records check determination and national fingerprint records check determination~~ for any employee other than the director ~~revealed a criminal record of any kind was unsatisfactory,~~ such employee shall not be allowed to work in the center until he or she either has obtained a satisfactory state fingerprint records check determination and national fingerprint records check ~~determinations~~ determination or has had the unsatisfactory determination reversed in accordance with Code Section 20-1A-43. If the determination was unsatisfactory as to any employee of an applicant's facility, ~~the~~ that applicant shall, after receiving notification of that unsatisfactory determination, take such steps as are necessary so that such person is no longer an employee. ~~Any employee other than the director who receives a satisfactory preliminary records check shall not be required to obtain a fingerprint records check unless such an employee has been designated as a director or as permitted by the provisions of subsection (c) of Code Section 20-1A-39.~~

20-1A-34.

The department shall transmit to GCIC both sets of fingerprints and the records search fee from each fingerprint records check application. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly

conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department in writing of any derogatory finding, including, but not limited to, any criminal record, of the state fingerprint records check determination or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a national fingerprint records determination within ten business days of receiving such report.

20-1A-35.

(a) After receiving a Federal Bureau of Investigation report regarding a national fingerprint records check ~~under Code Section 20-1A-34~~ determination, the department shall make a determination based thereon and notify ~~in writing~~ the license applicant in writing as to whether ~~that~~ the national fingerprint records check determination was satisfactory or unsatisfactory. If the national fingerprint records check determination was unsatisfactory as to the director of an applicant's facility, after receiving notification of that unsatisfactory determination, that applicant shall designate another director for such facility for which director the applicant has not received or made an unsatisfactory preliminary records check determination or state fingerprint records check determination and national fingerprint records check determination and proceed under the requirements of Code Sections 20-1A-32 through 20-1A-34 and this Code section to obtain a state fingerprint records check determination and national fingerprint records check ~~determinations~~ determination for ~~the~~ such newly designated director. The director and any employee may begin working upon the receipt of a satisfactory state fingerprint records check determination ~~pending the receipt of the~~ and national fingerprint records check determination from the department.

(b) The department ~~may~~ shall revoke the license of ~~that~~ any facility if ~~the facility~~ it fails to comply with the requirements of this Code section and Code Section 20-1A-33 to receive a satisfactory state fingerprint records check determination and national fingerprint ~~determinations~~ records check determination on the director ~~or to comply with Code Section 20-1A-33 regarding~~ and all employees ~~other than the director~~.

20-1A-36.

No facility operated as an early care and education program or similar facility or any operator of such a facility shall employ any person who has been convicted of or who has entered a plea of guilty or nolo contendere to any offense specified in Code Section 16-12-1.1 or allow any such person to reside at or be domiciled at such facility in violation of Code Section 16-12-1.1. The department shall either deny the issuance of or revoke the license, commission, or registration of any such facility violating the provisions of this

Code section. The powers and duties set forth in this Code section are cumulative and not intended to limit the powers and duties set forth throughout this article.

20-1A-37.

~~(a) Notwithstanding any other provision of this article, an~~ Any individual who is 18 years of age or older who resides in a family day-care home, ~~as defined by Code Section 20-1A-2,~~ shall not be required to provide fingerprints for routine fingerprints records checks if the operator of the family day-care home provides the department with an affidavit stating that such individual is not present in the home at the same time as the children who are received for pay for supervision and care. However, all persons residing in a family day-care home are required to obtain satisfactory preliminary records checks and submit them to the department a records check application. Such individual's fingerprints shall be submitted for a state fingerprint records check determination and national fingerprint records check determination. Such individual may reside at the family day-care home upon receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. If the state fingerprint records check determination is unsatisfactory, the department shall notify the operator of the family day-care home, and such individual shall not be allowed to reside at the family day-care home until such individual has obtained a satisfactory state fingerprint records check determination and national fingerprint records check determination or has had the unsatisfactory determination reversed in accordance with Code Section 20-1A-43. The department shall revoke the license of a family day-care home if such home fails to comply with the requirements of this Code section.

~~(b) As an alternative to the requirements set out in this article pertaining to obtaining preliminary criminal records check determinations through the department for employees of centers and adults residing in a family day-care home, but not including directors of centers, centers may obtain GCIC information through local law enforcement agencies. The center shall be responsible for reviewing the GCIC information obtained for the potential employee or adult residing in the family day-care home and making a written determination that the individual does not have a criminal record as defined in this article. This written determination, together with all supporting documentation received from any law enforcement agency, must be maintained in the center's file and available for inspection by the department. This satisfactory determination must be made before the employee begins any duties for the center.~~

234 20-1A-37.1.

235 (a) Where ~~However, where~~ there is an urgent need for an emergency temporary employee
236 to work at a center's facility in order to avoid immediate noncompliance with staffing
237 requirements, such center may utilize the employee applicant as an emergency temporary
238 employee after applying for the preliminary records check determination through the local
239 law enforcement agency ~~and completing the affidavit~~. In such emergency situations, the
240 director of the center ~~must~~ shall complete an affidavit, with all supporting documentation
241 attached thereto, stating that the GCIC information has been requested through an
242 identified local law enforcement agency and that the results were not immediately available
243 to the center prior to assigning the employee to work with children at the center's facility
244 in order to avoid immediate noncompliance with staffing ratios. The affidavit with
245 supporting documentation ~~must~~ shall be maintained in the center's file on the individual and
246 shall be available to the department for inspection. The director shall review the GCIC
247 information upon receipt, but in no case shall an emergency temporary employee be
248 permitted to continue working for more than ~~three~~ ten days without having a satisfactory
249 state fingerprint records check determination ~~made by the director and national fingerprint~~
250 records check determination made and entered into the center's file on the employee with
251 all supporting documentation. The department shall promulgate rules and regulations
252 limiting the extent to which centers are authorized to use emergency temporary employees
253 in accordance with this subsection.

254 (b) Employees, emergency temporary employees, and other adults required to have records
255 ~~checks~~ check applications who are utilized by centers ~~are~~ shall be subject to all other
256 requirements set forth in this article. Where the department has reason to question the
257 validity of the NCIC information or GCIC information or the satisfactory determination
258 ~~made by the center~~, the department may require the employee, emergency temporary
259 employee, or other adult to submit a ~~preliminary criminal~~ records check application
260 through the department together with appropriate fees.

261 20-1A-38.

262 (a) If the director of a facility which has been issued a license ceases to be the director of
263 that facility, the licensee shall thereupon designate a new director. After such change, the
264 licensee of that facility shall notify the department of such change and of any additional
265 information the department may require regarding the newly designated director of that
266 facility. Such information shall include, but not be limited to, any information the licensee
267 may have regarding preliminary records check determinations or any state fingerprint
268 records check determinations and national fingerprint records check determinations
269 regarding that director. After receiving a change of director notification, the department

shall make a written determination from the information furnished with such notification and the department's own records as to whether satisfactory or unsatisfactory preliminary records check determinations or state fingerprint records check determinations and national fingerprint records check determinations have ever been made for the newly designated director. If the department determines that such director within 12 months prior thereto has had satisfactory state fingerprint records check determinations and national fingerprint records check determinations, such determinations shall be deemed to be satisfactory state fingerprint records check determinations and national fingerprint records check determinations as to that director. The license of that facility shall not be adversely affected by that change in director, and the licensee shall be so notified.

(b) If the department determines under subsection (a) of this Code section that there has ever been an unsatisfactory preliminary records check determination or state fingerprint records check determination or national fingerprint records check determination of the newly designated director which has not been legally reversed, the center and that director shall be so notified. The license for that director's facility shall be indefinitely suspended or revoked unless the center designates another director for whom it has not received or made an unsatisfactory preliminary records check determination or state fingerprint records check determination or national fingerprint records check determination and proceeds pursuant to the provisions of this Code section relating to a change of director.

(c) If the department determines under subsection (a) of this Code section that there have been no state fingerprint records check determinations and national fingerprint records check determinations regarding the newly designated director within the immediately preceding 12 months, the department shall so notify the center. The center shall furnish to the department the ~~fingerprint~~ records check application of the newly designated director after the date the notification is sent by the department, or the license of that facility shall be indefinitely suspended or revoked. If that ~~fingerprint~~ records check application is so received, unless the department has within the immediately preceding 12 months made a satisfactory state fingerprint records check determination regarding the newly designated director, the department shall perform a state fingerprint records check determination of the newly designated director, and the applicant and that director shall be so notified. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section regarding procedures after notification shall apply. If that determination is satisfactory, the department shall perform a national fingerprint records check determination for that director as provided in Code ~~Sections~~ Section 20-1A-34 and subsection (a) of Code Section 20-1A-35. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. If that determination is satisfactory, the

center and director for whom the determination was made shall be so notified after the department makes its determination, and the license for the facility at which that person is the newly designated director shall not be adversely affected by that change of director. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section shall apply.

20-1A-39.

(a) Before a person may become an employee other than a director of any center after that center has received a license, that center shall require that person to obtain a satisfactory ~~preliminary records check~~ state fingerprint records check determination pending the receipt of the national fingerprint records check determination. The center shall maintain documentation in the employee's personnel file, ~~which is~~ available to the department upon request, which reflects that a satisfactory ~~preliminary criminal~~ state fingerprint records check determination was received before the employee ~~began~~ begins working with children. If the ~~preliminary~~ state fingerprint records check determination for any potential employee other than the director ~~reveals a criminal record of any kind is unsatisfactory,~~ such potential employee shall not be allowed to begin working until either such potential employee has obtained a satisfactory state fingerprint records check determination and national fingerprint records check determinations determination or has had the unsatisfactory ~~preliminary or state fingerprint records check determination or national fingerprint records check determination~~ reversed in accordance with Code Section 20-1A-43. If ~~either the preliminary or the~~ state fingerprint records check determination or national fingerprint records determination is unsatisfactory, the center shall, after receiving notification of ~~the~~ such unsatisfactory determination, take such steps as are necessary so that such person is no longer an employee. ~~Any potential employee other than the director who receives a satisfactory preliminary records check determination shall not be required to obtain a fingerprint records check determination except as permitted in accordance with subsection (c) of this Code section.~~

(b) A license ~~is~~ shall be subject to suspension or revocation, and the department ~~may~~ shall refuse to issue a license if a director or employee does not undergo the records ~~and fingerprint checks~~ check application applicable to that director or employee and receive satisfactory determinations.

(c) After the issuance of a license, the department may require a state fingerprint records check determination and a national fingerprint records determination on any director or employee to confirm identification for records search purposes, when the department has reason to believe the director or employee has a criminal record that renders the director

or employee ineligible to have contact with children in the center, or during the course of a child abuse investigation involving the director or employee.

(d) No center ~~may~~ shall hire any person as an employee unless there is on file in the center an employment history and a satisfactory ~~preliminary~~ state fingerprint records check determination and national fingerprint records check determination or, if the ~~preliminary~~ state fingerprint records check determination revealed a criminal record of any kind and national fingerprint records check determination was unsatisfactory as to such person, ~~either satisfactory state and satisfactory national records check determinations for that person or~~ proof that ~~an~~ such unsatisfactory determination has been reversed in accordance with Code Section 20-1A-43.

(e) A director of a facility having an employee whom that director knows ~~or should reasonably know~~ to have a criminal record that renders the employee ineligible to have contact with children in the center shall be guilty of a misdemeanor. If a director is convicted, including a plea of nolo contendere, pursuant to this subsection, such director shall not be eligible to remain as or become a director subsequent to such conviction.

20-1A-39.1.

On or before one year after the effective date of this Act, the department shall perform a criminal background check for each person who, as of the effective date of this Act, was a director of, employee of, or adult living in a family day-care center requiring a satisfactory state fingerprint records check determination and national fingerprint records check determination, the same as required under this article for new directors, employees, or adults living in a family day-care center on the effective date of this Act, unless such person is no longer a director of, employee of, or adult living in a family day-care center at the time a criminal background check would otherwise be performed under this Code section. If any such person has an unsatisfactory state fingerprint records check determination or national fingerprint records check determination, such person shall follow the procedure set forth in Code Section 20-1A-43.

20-1A-40.

(a) GCIC and law enforcement agencies which have access to GCIC information shall cooperate with the department in performing preliminary records check determinations, and GCIC and law enforcement agencies which have access to NCIC information or GCIC information shall cooperate with the department in performing state fingerprint records checks check determinations and national fingerprint records check determinations required under this article and shall provide such information so required for such records checks notwithstanding any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain NCIC information or GCIC information otherwise authorized to be obtained pursuant to this article, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than \$5,000.00, imprisoned for not more than two years, or both.

20-1A-41.

(a) Neither GCIC, NCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A center, its director, and its employees shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the requirements of this article.

20-1A-42.

The requirements of this article are supplemental to any requirements for a license imposed by Article 1 of this chapter.

20-1A-43.

A determination by the department regarding preliminary records check determinations or state fingerprint records check determinations or national fingerprint records ~~checks~~ check determinations under this article, or any action by the department revoking, suspending, or refusing to grant or renew a license based upon such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department. It is expressly provided that upon motion from any party, the hearing officer may, in his or her discretion, consider matters in mitigation of any conviction, provided that the hearing officer examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpitude on the part of the person making a motion for an exception to sanctions normally imposed. If the hearing officer deems a hearing to be

411 appropriate, he or she will also notify at least 30 days prior to such hearing the office of the
412 prosecuting attorney who initiated the prosecution of the case in question in order to allow
413 ~~the~~ such prosecutor to object to a possible determination that ~~the~~ such conviction would not
414 be a bar for the grant or continuation of a license or employment as contemplated within
415 this chapter. If objections are made, the hearing officer ~~will~~ shall take such objections into
416 consideration in considering the case.

417 20-1A-44.

418 The board is authorized to provide by regulation for the administration of this article."

419 **SECTION 2.**

420 This Act shall become effective only if funds are specifically appropriated for purposes of
421 this Act in an appropriations Act making specific reference to this Act and shall become
422 when funds so appropriated become available for expenditure.

423 **SECTION 3.**

424 All laws and parts of laws in conflict with this Act are repealed.